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September 21, 1994

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SEP 21 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, DC 20554

Re: Ex Parte Presentation In Docket No. 92-260

Dear Mr. Caton:

Enclosed please find the original and one copy of a memorandum summarizing my ex parte presentation of this date to Patrick J. Donovan, Chief of the Policy and Rules Division of the Cable Services Bureau, and members of his staff with respect to the petitions for reconsideration pending in Implementation Of The Cable Television Consumer Protection and Competition Act of 1992 (Cable Home Wiring), MM Docket No. 92-260.

Sincerely,

Deborah C. Costlow
Deborah C. Costlow

cc: Patrick J. Donovan

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MEMORANDUM

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

TO: William F. Caton
FROM: Deborah C. Costlow *DC*
DATE: September 21, 1994
RE: Ex Parte Presentation In MM Docket No. 92-260

I am submitting the original and one copy of this memorandum summarizing my ex parte presentation of this date to Patrick J. Donovan, Chief of the Policy and Rules Division of the Cable Services Bureau, and members of his staff with respect to the petitions for reconsideration pending in Implementation Of The Cable Television Consumer Protection and Competition Act of 1992 (Cable Home Wiring), MM Docket No. 92-260. I am making my presentation on behalf of the National Private Cable Association, which consists of SMATV and wireless cable (MMDS) operators.

In its initial Report and Order, the Commission adopted rules requiring a franchised cable operator to offer to sell home wiring to a subscriber upon the subscriber's voluntary termination of service, assuming the wiring belongs to the cable operator under otherwise applicable law. One purpose of the rules was to promote competition in the multichannel video programming industry by prohibiting franchised operators from interfering with the use of the wiring by alternative providers. Enabling subscribers to purchase home wiring will make it easier for them to switch to such alternative providers thereby fostering competition.

MMDS operators already have benefitted from the new rules, particularly in the context of single-family homes whose owners can no longer be held hostage by franchised cable operators making claims of ownership to the cable wiring. But for the rules, such claims would have continued to discourage homeowners from switching to MMDS providers, even when the claims of ownership were of doubtful validity under state law.

The Commission also addressed the wiring issue in the context of apartments, condominium buildings, and other multi-dwelling units ("MDUs"). When a resident of a MDU voluntarily terminates the service of the franchised cable operator, the operator must give the resident the opportunity to purchase the wiring extending from the back of the television receiver to a point at or about 12 inches outside of where the wiring enters the subscriber's dwelling unit (excluding loop or series wiring), again

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assuming that the wiring belongs to the cable operator under the otherwise applicable law.

Despite congressional intent to the contrary, the rules preserve the anti-competitive status quo. Just as the owner of a single-family home will make the decision whether to switch multichannel providers, it is the owner of the MDU, not the resident, who will choose between, for example, franchised cable, MMDS, and SMATV. Yet the rules give the MDU owner no ability to purchase the interior wiring, thereby leaving the MDU owner hostage to the ownership claims of the cable operator. As noted above, such claims often discourage property owners from changing to an alternative provider, even if the claims are of questionable merit under state law. Landlords have no desire to become entangled in litigation with cable operators over ownership of wiring, regardless of the merits of the cable operators' claims. As a result, MMDS and other alternative providers continually find themselves unable to gain access to MDUs. To allow MDU owners the freedom to choose providers other than the franchised cable operator, the rules should require cable operators to offer to sell interior wiring to MDU owners who voluntarily terminate the cable operator's service, just as the owners of other properties are given that opportunity.

As presently drafted the rules have little impact on subscribers, cable operators, or any other interested parties in the MDU context because MDU residents have little if any incentive to purchase the interior wiring. Whether moving to another MDU or to some other form of residence, it is unlikely that the subscriber will wish to take a few feet of cable wiring along. More likely, the subscriber's new residence will already be equipped with wiring. Surely Congress did not envision a nation of cable subscribers who would essentially be assigned a particular strand of cable to carry with them from residence to residence until that wiring wore out. Upon reconsideration by the Commission, the rules should be designed to accommodate the much more practical scenario of wiring being installed and remaining in place to serve a succession of residents of the particular MDU unit, which has been the precise effect of the rules as applied in the single-family home setting. This can best be achieved by allowing the MDU owner to purchase the wiring in the same fashion as the owner of a single-family dwelling is permitted to do.

The Commission should also reconsider the demarcation point in the MDU context. To foster competition, the demarcation point with respect to MDUs should be at least as practical as that applied in the single-family home context, i.e., twelve inches

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outside of the exterior wall where the cable enters the building. If the wiring enters the building at multiple points, then the MDU owner should be permitted to purchase the wiring at each such point. An even greater boost to competition would result if the MDU owner were permitted to purchase the wiring up to its property line, since this would allow the MDU owner even greater ability to accommodate some other provider of service, e.g., a SMATV operator who must use exterior wiring to interconnect its headend to the interior distribution wiring.

To the extent the Commission deems it expedient to allow a MDU resident to purchase some portion of the wiring, it should only be the wiring between the television receiver and the wallplate. For the reasons stated above, it is extremely unlikely that the resident will have any use for the odd piece of wiring extending from the wall plate into an interior wall. It is difficult to imagine any party expending the energy necessary to retrieve such a minimal strand of wiring. Moreover, the current rules could force the installation of new wiring in a location that is difficult to access each time there is a change in the identity of the occupant.

cc: Patrick J. Donovan